

1 (3) The proportion of the class members who do not  
2 object or who affirmatively support the proposed  
3 settlement;

4 (4) The competency and experience of counsel who  
5 support the settlement;

6 (5) The relative benefits to be received by  
7 individuals or groups within the class;

8 (6) The nature and breadth of releases to be  
9 obtained by the directors and officers as a result  
10 of the settlement; and,

11 (7) The extent to which the settlement is truly the  
12 product of arm's length bargaining, and not of fraud  
13 or collusion.

14 Whether articulated in the TMT Trailer Ferry terms -  
15 - "the probabilities of ultimate success should the claim be  
16 litigated" -- or in Texaco terms, those focusing on the  
17 likelihood of success in the form in which I quoted them  
18 above -- I think the first factor, which I weigh heavily,  
19 plainly favors approval.

20 In my view, if the debtors were to litigate  
21 entitlements to interest on the thousands of trade proofs of  
22 claim, they would have mixed results, with mixed incremental  
23 gains and losses, by reason of the variances in contractual  
24 terms from one agreement to the next, differences in the law  
25 amongst the thirty-one states whose substantive law would

1 have to be applied, and differences in the application of the  
2 law to each of those agreements. It is arguable, but by no  
3 means clear, that the debtors could prevail on the argument  
4 that a common federal judgment interest rate would apply to  
5 all non-interest-bearing claims, and it is even less clear  
6 that they would necessarily prevail on claims where a stated  
7 interest rate appeared on an invoice.

8 In that connection, many of the vendors' invoices  
9 called for interest on unpaid amounts of one and a half to  
10 two percent per month, which, if honored, would have resulted  
11 in claims for interest of from eighteen percent to twenty-  
12 four percent annum. Though it's now nearly forty years ago,  
13 I still remember the difficult "Battle of the Forms" issues  
14 we dealt with in law school, and I consider them, at the  
15 least, more than fair game for litigation. And once one gets  
16 past the offer and acceptance issues associated with battles  
17 of the forms, there are separate issues as to whether  
18 contracts seemingly including such interest provisions should  
19 or should not be regarded as contracts of adhesion --  
20 remembering that here we are not talking about  
21 unsophisticated consumers being bound by those forms, but  
22 rather by a multi-billion-dollar business entity.

23 I also recognize that the litigation might also  
24 involve, apart from contractual and civil procedure issues,  
25 issues as to discrimination amongst creditors or the

1 equitable fairness of the proposed settlement, in a manner  
2 akin to those I've addressed above on pendency interest. In  
3 this respect, Adelphia could certainly argue for a lower  
4 rate, but it would have to do so in the context of other  
5 creditors getting pendency interest of from six percent on  
6 the low end to 11.875 percent on the high end -- a rate  
7 environment in which the eight percent that would go to the  
8 trade claims holders would hardly stand out. There would be  
9 differences in circumstances of course -- not the least of  
10 which is that the interest rate is typically one of the most  
11 heavily bargained-for aspects of funded debt. But on the  
12 other hand, the holders of trade claims could legitimately  
13 argue that of all the creditor groups, they were the ones  
14 that benefitted least from the substantial time that this  
15 case took to reorganize. They were structurally senior to  
16 almost everybody, and didn't need such a long time to  
17 generate enough value to pay them in full. They were denied  
18 the opportunity to get their distributions quickly and  
19 reinvest those distributions elsewhere, while the debtors  
20 focused on maximizing value for everyone else. On the  
21 merits, this argument would have some force.

22           Turning to the second factor, the burden and  
23 complexity of the litigation, which I also weigh heavily, the  
24 facts here likewise strongly support approval of the  
25 settlement. The debtors have spoken of having 18,000 proofs

1 of claim, and while the number of those that are trade claims  
2 has not been made clear, it is at least likely that they  
3 represent a large proportion of the total. They were filed  
4 against debtors doing businesses in thirty-one states, and  
5 representing thousands of individual contracts. (Since some  
6 proofs of claim may combine claims on multiple contracts, and  
7 others may involve master contracts, I assume this number may  
8 be more or less, but plainly it would require review of all  
9 those proofs of claims to find out.) If the matter were to  
10 be litigated, the debtors would be faced with the significant  
11 burdens of (a) reviewing each agreement or instrument  
12 supporting a particular rate of interest payable on the  
13 claims; (b) in the event no agreement exists, determining the  
14 state in which the claim arose to award the correct state  
15 judgment rate of interest; and (c) litigating the entitlement  
16 to interest reflected in invoices and purchase orders and  
17 litigating whether such documents constitute "contracts" for  
18 purposes of payment of pendency interest. And then, as I  
19 noted, addressing the battle of the forms, and then  
20 addressing the extent to which they might be regarded as  
21 contracts of adhesion.

22 At the outset of argument, I wondered whether the  
23 interest rate agreed on might be slightly high, thinking that  
24 I would have regarded the perfect settlement amount to be six  
25 percent, rather than eight percent. But I came to realize

1 that this was an insufficient basis to disapprove the  
2 settlement, both for factual reasons, which I'll discuss  
3 momentarily, and legal ones; the latter referring to the  
4 point that I previously discussed: That a bankruptcy court's  
5 review is not based on such a test, what the Bankruptcy Court  
6 might have done or what it might have preferred, but rather  
7 on whether the settlement falls below the lowest point in a  
8 range of reasonableness.

9 At the outset, I had assumed -- now I believe  
10 unrealistically -- that because at the time Adelphia had its  
11 headquarters in Pennsylvania, which has a six percent  
12 interest rate, its claims would bear at most the six percent  
13 interest rate under Pennsylvania law. But it later became  
14 clear that the trade claims at least arguably arose much more  
15 locally, where Adelphia has its subscribers and field  
16 operations, resulting in an array of arguably applicable  
17 interest rates, with those in several jurisdictions where  
18 Adelphia has the most subscribers - for example, California,  
19 with its ten percent interest rate, and New York, with its  
20 nine percent rate -- higher than the eight percent that was  
21 agreed on. I also was reminded of the invoices claiming  
22 interest entitlements of from eighteen to twenty-four percent  
23 per year, as I have noted above, dramatically increasing the  
24 stakes in losses over applicable interest rate issues. All  
25 of this would make litigating all of these issues a

1 litigation nightmare. To say there would be a "prospect of  
2 complex and protracted litigation if the settlement is not  
3 approved" would be the understatement of the decade.

4 With respect to the third Texaco factor, which is  
5 adapted from civil class action litigation and which  
6 translates imperfectly into a bankruptcy context, I consider  
7 this factor, but give it only modest weight. Here, some  
8 constituencies favor the settlement, but I sense that a  
9 greater number oppose it. But as I held in my ruling on the  
10 DoJ-SEC settlement, the approval of a settlement cannot be  
11 regarded as a counting exercise. Rather, it must be  
12 considered in light of the reasons for any opposition, and  
13 the more fundamental factors -- such as benefits of  
14 settlement, likely rewards of litigation, costs of  
15 litigation, and downside risk -- described above. And as  
16 counsel for the FrontierVision Bondholders observed, making a  
17 point that I regarded as significant, there can come a time  
18 in a case when it's important to get issues resolved and to  
19 reach closure on outstanding issues. And some constituencies  
20 recognize this sooner than others do.

21 I also note in this connection that the settlement  
22 interest rate is the same as the settlement interest rate in  
23 the settlement recommended by the Creditors' Committee in the  
24 fall of 2004. Of course, the circumstances now are not quite  
25 identical to those then. But the underlying issues that

1 would be the meat of any litigation do not differ, especially  
2 in material respects, and since that time the estate has had  
3 a greater need to get issues behind it to bring this case to  
4 a successful conclusion; and, if it can meet the standards  
5 for confirmation, getting its deal with Time Warner and  
6 Comcast done, so that it can deliver value to creditors in  
7 these cases.

8           The fourth Texaco factor -- the competency and  
9 experience of counsel who support the settlement -- while not  
10 as important as factors such as the chances of success and  
11 the burdens of litigation -- likewise favors approval of the  
12 settlement. The fifth and sixth Texaco factors are not  
13 applicable to any material extent here. The seventh factor -  
14 - the extent to which the settlement is the result of arm's  
15 length bargaining and is not collusive -- is, as I noted in  
16 my earlier settlement decision, of great importance when it  
17 is lacking, but of only modest importance in other cases.  
18 Here, there is no basis for a conclusion that the settlement  
19 at this rate was anything other than an arm's length deal.

20           For the foregoing reasons, I can easily make the  
21 Penn Central and W.T. Grant findings. This settlement falls  
22 well "within the reasonable range of litigation  
23 possibilities." I find that the eight percent rate to be  
24 provided under the settlement is fair and equitable, and it  
25 is approved.

1           We're now going to take a five-minute recess, at  
2           which time counsel can get ready for the disclosure statement  
3           hearing.

4           I will note only one other thing before we take the  
5           recess.

6           As most of you know, we have had discussions as to  
7           whether one of my judicial colleagues should act as a  
8           facilitator; in fact, I think we used the words "hall  
9           monitor," to assist parties in the resolution of the MIA. My  
10          colleague Judge Morris will act in such a role.

11          I would request either or both of the debtors or the  
12          Creditors' Committee to act as a mechanical facilitator to  
13          help get the parties together with Judge Morris, so that she  
14          can assist me in that regard.

15          We will now take a five-minute recess, at which time  
16          I'll take the disclosure statement matters immediately  
17          thereafter.

18          (Proceedings concluded at 9:54 a.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.



April 28, 2006

Coleen Rand  
Certified Court Transcriptionist/Agency Director  
For Rand Transcript Service, Inc.

**EXHIBIT E**

**Bench Ruling from *In re Loral Space & Communications Ltd.***

1  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 - - - - -x

5 In the Matter of

6 LORAL SPACE & COMMUNICATIONS 03-41710 (RDD)  
LTD., et al., 03-41709 to  
7 03-41728

Debtors.

8 - - - - -x

9 July 25, 2005  
3:00 p.m.

10 United States Custom House  
11 One Bowling Green  
New York, New York 10004

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13  
14 CONFIDENTIAL TRANSCRIPT

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16  
17 BENCH RULING in the Matter of Loral Space &  
18 Communications Ltd. and Space Systems/Loral, Inc.

19  
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22 B E F O R E:

23 HON. ROBERT D. DRAIN,  
24 U.S. Bankruptcy Judge.  
25

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Committee

1 LORAL SPACE AND COMMUNICATIONS, LTD.

2 P R O C E E D I N G S:

3 THE COURT: Please be seated.

4 All right. First, in looking at the  
5 audience, I assume there are people here who have  
6 not signed a confidentiality agreement with Loral;  
7 is that correct?

8 Because of that and because of the  
9 fact that a small but important part of the record  
10 was prepared under seal and a part of my ruling  
11 relates to that part of the record, I'm going to go  
12 a little bit out of order and give that part of my  
13 ruling first. So, therefore, those of you who are  
14 not bound by a confidentiality agreement with Loral  
15 should leave now. That part of my ruling will only  
16 last five or ten minutes, and then someone will  
17 come back and get you for the bulk of my ruling.  
18 So anyone who has not signed a confidentiality  
19 agreement with Loral needs to leave the courtroom  
20 now, and someone will come and get you.

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CONFIDENTIAL

THE COURT: All right, as I just noted, I'm going to address two parts of my ruling now somewhat out of order because of the need to keep them confidential, for Loral's business reasons and for the benefit of the estates, and then go to the bulk of my opinion and call the audience back.

As with all of my bench rulings, I will review the transcript after it's prepared and reserve the right and discretion to correct it for errors, and my own errors, and make sure the citations are correct. The following constitutes a part of my ruling on Loral's request for confirmation of its fourth amended joint plan, as well as the motion by the equity committee for leave to pursue fraudulent transfer litigation in respect of the Orion notes or, more properly, the guarantee of those notes issued by Ltd.

PAGE 5 LINE 20 THROUGH PAGE 19 LINE 21

ARE FILED UNDER SEAL

PER JUDGE DRAIN'S ORDER AT THE HEARING

Okay, could someone let the folks in? And that ends the sealed portion of the transcript.

1 LORAL SPACE AND COMMUNICATIONS, LTD.

2 THE COURT: All right. Let me  
3 continue with my ruling on the request by Ltd. and  
4 its subsidiary debtors for confirmation of their  
5 joint Chapter 11 plan.

6 Based on my review of the plan and  
7 disclosure statement, several days of testimony,  
8 the briefs, and the exhibits, I find that the  
9 debtors have satisfied the requirements of Sections  
10 1129(a) and (b) of the Bankruptcy Code, and that  
11 the plan should and will be confirmed.

12 I will discuss primarily those  
13 sections or elements of Sections 1129(a) and (b) as  
14 to which objections were raised, but I should note,  
15 before I get to those objections, that Loral has  
16 satisfied all of its burdens under 1129(a),  
17 including in respect of feasibility under  
18 Bankruptcy Code Section 1129(a)(11) and best  
19 interests under Bankruptcy Code 1129(a)(7), which  
20 were not objected to.

21 The primary objections to the plan  
22 go to the plan's proposed cramdown of the preferred  
23 and common shareholder classes, who would receive  
24 no recovery under the plan. In addition, there is  
25 an objection as to whether the plan is in good



1 LORAL SPACE AND COMMUNICATIONS, LTD.  
2 faith, as required under Section 1129(a)(3) of the  
3 Bankruptcy Code.

4 Let me address the cramdown  
5 objections first. They hinge obviously on the  
6 assertion that Ltd., the parent and issuer of the  
7 preferred and common stock, is solvent, and that  
8 therefore the unsecured creditors of Ltd., and  
9 potentially creditors of the subsidiary debtors, as  
10 well, are receiving more than full recovery on  
11 their claims under the plan and thus that the plan  
12 improperly deprives the shareholders of their  
13 rightful recovery.

14 I conclude, based on my review of  
15 the expert reports and testimony of the three  
16 investment banking firms retained in the case, as  
17 well as the testimony of Mr. Schwartz and the  
18 arguments and exhibits raised and introduced by the  
19 informal Loral Stockholders Protective Committee,  
20 or "LSPC," that in fact Ltd. is insolvent. Let me  
21 summarize those findings first, and then I will go  
22 into some detail as to my reasons for them.

23 I base my conclusion primarily upon  
24 my review of the analyses done by the three  
25 experts: Greenhill, Jeffries and Chanin, retained

1                   LORAL SPACE AND COMMUNICATIONS, LTD.  
2       respectively by the debtors, the creditors'  
3       committee, and the official equity committee.  
4       Those experts employed traditional and well  
5       recognized methodologies for valuing companies of  
6       this kind. Each expert considered a going concern  
7       valuation of Ltd. based on its two core business  
8       segments, as well as other miscellaneous assets.  
9       Each expert considered whether to apply a  
10      discounted cash flow method, a comparable  
11      transaction method, and a comparable companies  
12      method, in placing a value on those assets together  
13      as a going concern. The first segment, if you  
14      will, of Ltd.'s value is SS/L. There, as a  
15      midpoint, minus the EBITDA attributable to its  
16      projection for government contracts, Chanin came to  
17      a value of approximately \$275 million, Jeffries  
18      came to a value of approximately \$202 million, and  
19      Greenhill came to a value of approximately \$97  
20      million.

21                   In considering what would be a  
22      proper valuation of SS/L, I, of course, noted the  
23      large difference between Greenhill and the other  
24      two experts. That difference is largely  
25      attributable to Greenhill's method for ascertaining

1 LORAL SPACE AND COMMUNICATIONS, LTD.  
2 the terminal value on a DCF basis of SS/L. Unlike  
3 the other two investment bankers, Mr. Robins of  
4 Greenhill applied a perpetual growth methodology to  
5 determine that terminal value. The equity  
6 committee pointed out potential flaws with that  
7 choice, including its assertion that the percentage  
8 of 1 to 3 percent applied by Greenhill in that  
9 methodology was too low. Frankly, I don't accept  
10 that it was too low as a matter of gauging  
11 inflation, given the last 25 years or so of  
12 inflation trends introduced into evidence.

13 However, I did, in the end, rule out the Greenhill  
14 valuation for SS/L, because, to me, it appeared to  
15 be simply too low in comparison to the liquidation  
16 value of the company, and everyone's desire in this  
17 case is to keep SS/L in business.

18 Instead I focused on the valuations  
19 of SS/L prepared by Chanin and Jeffries. And  
20 basically on my review of those two valuations and  
21 the differences between them, I determined that a  
22 reasonable value for SS/L was 230 million dollars.  
23 The main difference between Chanin's and Jeffries'  
24 valuation of SS/L stemmed from the fact that  
25 Chanin, like Greenhill, weighted it's valuation one

1           LORAL SPACE AND COMMUNICATIONS, LTD.  
2     hundred percent on the discounted cash flow  
3     methodology, whereas, Jeffries gave 30 percent of  
4     its weighting to a comparable companies  
5     methodology. All of the investment bankers, by the  
6     way, determined that there were no relevant  
7     comparable transactions upon which to do a  
8     valuation of SS/L, except for one that was somewhat  
9     dated and for which information was not  
10    particularly reliable, the Hughes/Boeing  
11    transaction.

12                   Jeffries acknowledged that there was  
13    no clear comparable company to SS/L; however, I  
14    gave some weight to Mr. Derrough's testimony that  
15    based upon, first, the similarities between Orbital  
16    Sciences and SS/L, as well as his own and one of  
17    his colleague's experience with Orbital Sciences,  
18    its stock price could be used as a comparable  
19    measure for determining SS/L's value. Particularly  
20    since, according to Mr. Derrough, he gave SS/L a  
21    better multiple, notwithstanding Orbital Sciences'  
22    more steady, or regular, government business as its  
23    main source of revenue. I also discounted Chanin's  
24    evaluation of SS/L because so much of the value, in  
25    fact all of the value for the company, was placed

## 1 LORAL SPACE AND COMMUNICATIONS, LTD.

2 on the final projected year, 2008, to determine the  
3 DCF terminal value. While I accept that the  
4 projections underlying the current going concern  
5 valuations of the debtors are reasonable, I note  
6 that it is only in that last year that there is  
7 positive EBITDA for SS/L. And given the  
8 uncertainties of the contracts in this business  
9 and, for want of a better word, the lumpiness of  
10 its cash flow projections given the nature of that  
11 business in which very substantial contracts  
12 require very substantial outlays of expense, I  
13 thought that the Chanin midpoint valuation should  
14 be discounted accordingly.

15 The second segment, if you will, of  
16 Ltd. for valuation purposes is the FSS business.  
17 There, the three investment bankers' valuations  
18 were much more comparable. Each investment banker  
19 recognized that each of the three traditional  
20 valuation methodologies could be applied. That is,  
21 there were comparable transactions as well as  
22 comparable companies with which to measure FSS's  
23 value, and, therefore, those two methodologies  
24 could be added to a DCF valuation. The mid ranges  
25 on FSS for Chanin, Greenhill and Jeffries were

1                   LORAL SPACE AND COMMUNICATIONS, LTD.  
2     \$470.6 million, \$392 million, and \$442.3 million  
3     respectively. The main difference among the  
4     investment bankers with regard to their valuations  
5     was the weighting of the three methodologies.  
6     Chanin placed considerably more weight on the DCF  
7     valuation, weighting the other two at 20 percent  
8     each, with a DCF weighting 60 percent. Greenhill's  
9     valuation weighted each of the three methodologies  
10    equally, and Jeffries had a slight preference for  
11    the DCF valuation, going 30, 30 and 40 percent,  
12    with 40 percent being accorded to its DCF  
13    methodology.

14                   I chose a valuation for FSS of \$440  
15    million, which is slightly over the average of all  
16    three. It seemed to me that this was justified for  
17    a couple of reasons. First, I did not accept  
18    Chanin's giving 60 percent of the weight to DCF,  
19    which it did, according to Mr. Belinsky, to reflect  
20    the growth in the business that is being projected.  
21    It seemed to me that this was somewhat skewing the  
22    value toward a more risky valuation. I did this  
23    also noting that Chanin nevertheless had a somewhat  
24    higher EBITDA multiple for its DCF valuation than  
25    either of the other two bankers.

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2 There are two other elements of the  
3 valuation. The first is a projection of available  
4 cash at confirmation, and here there was roughly a  
5 70 million dollar swing between the experts. That  
6 was largely attributable to the view of Mr.  
7 Derrough and his colleagues at Jeffries that, given  
8 the nature of SS/L's business and its cash needs,  
9 it would need to retain a hundred million as  
10 opposed to 50 million dollars of cash to be  
11 comfortable about conducting that business. Chanin  
12 projected \$180 million of cash for SS/L and FSS and  
13 other sources being available for creditors,  
14 Jeffries \$117 million, and Greenhill \$190.35  
15 million. I saw some merit in Jeffries' argument  
16 about SS/L's cash needs, particularly given the  
17 testimony about the lumpiness of SS/L's cash flow,  
18 and therefore I chose an exit cash figure of 150  
19 million dollars.

20 The parties dropped into a basket  
21 labeled "other assets" three main assets that they  
22 ascribed -- or some of them ascribed -- value to:  
23 Loral's interest in XTAR, unused orbital slots, and  
24 SS/L's and other debtors' interests in real estate,  
25 but primarily, if not exclusively, SS/L's

1                   LORAL SPACE AND COMMUNICATIONS, LTD.  
2   headquarters in Palo Alto, California. The spread  
3   between the experts here was fairly large. Chanin  
4   projected \$217 million dollars of value in the  
5   other assets category, Jeffries \$114 million, and  
6   Greenhill \$143 million. The main differences were  
7   primarily in respect of unused orbital slots, which  
8   Chanin valued at a midpoint range of \$50 million  
9   dollars, as compared to Jeffries' \$5 million, and  
10   Greenhill's \$13 million.

11                   Frankly, based upon Loral's past  
12   history of being unable to sell unused orbital  
13   slots alone, as opposed to in connection with a  
14   satellite order, I was originally prepared to put  
15   zero dollars weight on this asset. However,  
16   Greenhill itself gives some value to them, and Mr.  
17   Christ introduced some basis for ascribing value to  
18   them, although indirectly connected to related  
19   satellite orders. I ascribed therefore 10 million  
20   dollars value to them in the end.

21                   As to the XTAR interest, the spread  
22   is between \$152 million, as valued by Chanin at its  
23   mid point, \$108 million by Jeffries, and \$130  
24   million by Greenhill. The main difference with  
25   respect to the experts' valuation of this asset is



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2 the percentage that they applied to the weighted  
3 average cost of capital used in their DCF  
4 valuation. Jeffries' low valuation of \$108 million  
5 was attributable to a relatively high WACC, which  
6 is attributable, in turn, to its view that XTAR  
7 would likely be financed only through equity  
8 financing, and is still a risky and uncertain  
9 investment that has not fulfilled yet, or even come  
10 close to, its projections or potential occupancy.  
11 On the other hand Chanin chooses a WACC that treats  
12 it much more like any other proven satellite asset  
13 of FSS and financeable with debt. Greenhill is  
14 closer to Chanin, but in the middle.

15 There was no particular reason given  
16 for Chanin's confidence in the XTAR asset, and its  
17 criticism of Jeffries was misplaced, in that it  
18 does appear that Jeffries revised its valuation  
19 upwards once XTAR went into service. In light of,  
20 however, the aggressiveness of Jeffries' discount,  
21 I took Greenhill's DCF number and added to it a  
22 little bit, but not much, and came up with a total  
23 value of \$135 million. Therefore, for the other  
24 assets generally, I ascribed a value of 150  
25 million. This leads to a total enterprise value of

1 LORAL SPACE AND COMMUNICATIONS, LTD.  
2 970 million dollars for Ltd. as a going concern.

3 I've given an explanation of how I  
4 got to most of those numbers, but let me add a  
5 little bit more on points raised by the LSPC. It  
6 points out that Mr. Schwartz, and the LSPC are in  
7 agreement about one thing, which is the value of  
8 SS/L. In October of 2003, when the parties and the  
9 court were focused almost exclusively on the  
10 proposed sale of Loral Skynet, or Loral's North  
11 American satellites, to Intelsat, Mr. Schwartz did  
12 his own not much more than back of the envelope  
13 valuation of the assets that would survive the  
14 Intelsat transaction. He subsequently testified  
15 that his valuation of SS/L, then and now, is  
16 driven, in his mind, by a different methodology  
17 than any of the three investment banker experts  
18 recognized, which is by simply multiplying SS/L's  
19 revenue by a factor of one. And when pressed by  
20 Mr. Christ, Mr. Schwartz acknowledged that he still  
21 believes that SS/L could or should be worth roughly  
22 one times revenue or something close to 450 to 500  
23 million dollars.

24 By the way, Mr. Schwartz's back of  
25 the envelope pro forma valuation of Loral after the

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2 Intelsat sale was approximately 1.48 billion  
3 dollars and included the type of valuation of SS/L  
4 that I just discussed. Mr. Robins, on behalf of  
5 Greenhill, pointed out that he disagreed with Mr.  
6 Schwartz's revenue multiple valuation approach for  
7 SS/L, noting in particular that such an approach  
8 doesn't make a lot of sense for SS/L, especially  
9 with its lumpy revenue projections, which are  
10 driven by the type of project cash flow that it  
11 tends to experience in connection with its  
12 business. Mr. Schwartz acknowledges his difference  
13 with the experts, and also acknowledges that, but  
14 for the Boeing-Hughes transaction, there are really  
15 no meaningful transaction comparables. Mr. Robins  
16 also pointed out that there are or have been  
17 significant changes in Loral since October of 2003.  
18 Many of those would appear to be for the better;  
19 however, in October of 2003, he testified FSS's  
20 projected EBITDA was considerably higher than it is  
21 now, SS/L's projected revenue was higher, and there  
22 was a projection of a hundred million dollars value  
23 for SatMex, which is currently in a bankruptcy case  
24 here as well as in Mexico. But more importantly, I  
25 conclude that Mr. Schwartz's valuation, which the

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2 LSEC has adopted, may be a legitimate valuation by  
3 a businessman who has, throughout his career, taken  
4 risks both for the good and the bad, but is not a  
5 reliable measure of valuation for purposes of the  
6 Section 1129(b) valuation that I must conduct.

7 The Federal Rules of Evidence permit  
8 a lay person to give an opinion as to value when he  
9 is the owner of the property, but instructs the  
10 judge to give that valuation whatever weight he or  
11 she thinks is appropriate. In this case, I relied  
12 on the three experts for each of the contending  
13 parties over Mr. Schwartz's valuation.

14 I also should address briefly the  
15 so-called expert report prepared in draft form by  
16 Jeffries in October of 2003, which was not used as  
17 a basis for expert testimony in connection with the  
18 Intelsat hearing or for any other expert testimony.  
19 And according to Mr. Derrough's testimony, it was  
20 not based on any sort of valuation conducted in any  
21 meaningful way of the non-Intelsat assets. I  
22 accept Mr. Derrough's testimony, which included a  
23 fairly credible reference to his learning at the  
24 time, or shortly thereafter, of real concerns about  
25 SS/L's future, which, fortunately, since then have

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2 been alleviated as a result of, among other things,  
3 the new satellite orders that I referred to  
4 earlier. That testimony leads me to accept Mr.  
5 Derrough's assertion that this draft report was not  
6 a real valuation of the non-Skynet assets or one  
7 that I should rely on.

8 I have not discussed yet my reason  
9 for placing a low valuation on Loral's real estate,  
10 which again, is primarily SS/L's Palo Alto  
11 headquarters. While it may be the case that that  
12 real estate is worth a considerable amount of money  
13 on a liquidation basis, I don't see much of a  
14 prospect of realizing any value from it as long as  
15 SS/L remains an ongoing business. And as I said  
16 earlier, I believe that my valuation of SS/L is  
17 driven primarily by that assumption. I ascribed a  
18 5 million dollar value to the real estate. And  
19 frankly, even that I believe was generous, because  
20 it was based solely on an assertion by Mr. Belinsky  
21 that he had talked with a leveraged-leasing expert  
22 who argued that a sale/leaseback of the real estate  
23 was feasible, although I saw no real underpinnings  
24 of that analysis. Chanin's midpoint for the real  
25 estate was \$15 million; the other experts ascribed

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2     no value to it... And again, that valuation is on a  
3     going concern basis. As Mr. Dewitt very credibly  
4     testified, SS/L could not move out of its  
5     headquarters without seriously jeopardizing the  
6     performance of ongoing contracts because of the  
7     very special equipment that is maintained there.  
8     In addition, it is obviously a preferred location  
9     attractive to the very special and highly qualified  
10    engineers and scientists and others that SS/L  
11    employs in building satellites. One cannot assume  
12    SS/L could maintain its business while selling and  
13    moving its headquarters.

14                   The equity committee and the LSPC  
15    raised other sources of potential value without  
16    ascribing any particular dollar amount to them.  
17    These included patents and patent litigation,  
18    potential new developments in technology, and  
19    tangentially, potential new markets such as in  
20    China and elsewhere. With regard to the patents, I  
21    have already discussed that matter: Loral has not  
22    been able to sell them, and although Chanin notes  
23    that there has not been a formal investment banker  
24    process for selling them, someone at Chanin also  
25    noted that the one offer received, for roughly \$300

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2 thousand was at arms length. As far as the patent  
3 litigation is concerned, it appears to be a long  
4 shot to me, particularly given the nature of the  
5 patents at issue. But what I did not say generally  
6 about the patents is that the uncontroverted  
7 testimony appears to be that the patents are useful  
8 only for Loral's technology and that its  
9 competitors use their own developed designs and  
10 patents, thus reducing the sale value of the  
11 patents considerably.

12 As far as potential new technologies  
13 and new markets are concerned, I believe that those  
14 possibilities, not being concrete enough to be  
15 projected at this time, are not properly in the  
16 valuations, except as they may appear in a  
17 comparable company or precedent transaction  
18 valuation, and that, beyond that measure, I cannot  
19 give any particular dollar value to them, noting  
20 that the experts have not either.

21 Mr. Christ raised one final point  
22 which deserved careful consideration. It is that,  
23 in his view of what SS/L's expenses should be and  
24 what they could be, the projected expenses for SS/L  
25 that underlie the business plan are too high, in

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2 his view, by approximately 20 million dollars.

3 Obviously if that were the case, the valuation of  
4 SS/L would increase considerably, because that 20  
5 million dollars would go right to increasing SS/L's  
6 EBITDA, which serves as the primary basis for each  
7 expert's DCF valuation of SS/L. Mr. Dewitt  
8 provided some corroboration of that view for SS/L's  
9 expenses in his testimony, in which he, as SS/L's  
10 president, said that in his view he thought SS/L's  
11 SG&A expense was approximately 21 million dollars.  
12 However, he acknowledged that that figure did not  
13 include any corporate allocation to SS/L and was  
14 not otherwise a complete figure.

15 I've reviewed Debtors' Exhibit 24,  
16 including Bates-stamped pages 050276 and 050282,  
17 and it does appear to me that there are additional  
18 categories of expenses that would not be included  
19 in Mr. Dewitt's 21 million dollar number. I also  
20 note that the roughly 43 million dollars of SS/L  
21 expenses in the projection was vetted by Greenhill,  
22 Jeffries and Chanin in their due diligence on the  
23 debtors' business plan, and I find it unlikely that  
24 those parties would have overlooked or obfuscated  
25 such a conspicuous discrepancy. Therefore I feel



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2     constrained to accept that expense number as the  
3     actual number that should be in the projections,  
4     and, therefore, do not adjust the core valuation of  
5     SS/L that I alluded to earlier.

6           Based on a 970 million dollar  
7     enterprise value for Ltd., the debtors at the  
8     parent company level are insolvent, whether one  
9     applies a contract rate of interest or a Federal  
10    judgement rate of interest to the unsecured claims.  
11    Nevertheless, let me briefly address that issue,  
12    because it has been addressed by the parties and is  
13    one of the two additional factors that the equity  
14    committee contends ultimately renders the debtors  
15    insolvent.

16           Section 502(b) (2) of the Bankruptcy  
17    Code disallows claims for unmatured interest.  
18    Notwithstanding that fact, the courts have long  
19    recognized that where a debtor is solvent, it is  
20    inequitable and improper for shareholders to  
21    recover before the debtors' unsecured creditors  
22    receive postpetition interest. To permit such a  
23    recovery by shareholders would give them a windfall  
24    at the expense of the unsecured creditors who have  
25    had to wait through the course of the case to

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2 receive their distributions. This "solvent debtor  
3 rule" has two bases recognized by the courts. The  
4 first is in Section 726 of the Bankruptcy Code,  
5 which flows through Section 1129(a)(7)'s best  
6 interests test. Section 726(a)(5) provides for  
7 payment of postpetition interest at the "legal  
8 rate" to unsecured creditors before recovery by the  
9 debtor or its shareholders. In addition, the  
10 courts have long recognized the right of unsecured  
11 creditors to receive postpetition interest under  
12 the fair and equitable rule as part of the cramdown  
13 standard. The equity committee really does not  
14 dispute that fact, but argues that, under the  
15 circumstances as it's fair and equitable that  
16 unsecured creditors receive postpetition interest  
17 at the Federal judgment rate  
18 of 1.1 percent rather than at their contract rate.

19 The fair and equitable basis for  
20 postpetition interest goes back at least to the  
21 Supreme Court's decision in Vanston Bondholders  
22 Protective Committee versus Green at 329 U.S. 156  
23 (1946), although it reaches back to cases before  
24 the turn of the century. That basis was referred  
25 to by Congress in the legislative history in

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2 connection with its amendment of Section 1124(3) of  
3 the Bankruptcy Code a few years ago, which further  
4 confirmed a fair and equitable basis for the  
5 solvent debtor rule. See 140 Cong. Rec. H 10,768  
6 (October 4, 1994) ("Specifically, courts have held  
7 that where an estate is solvent, in order for a  
8 plan to be fair and equitable, unsecured and under  
9 secured creditors' claims must be paid in full,  
10 including postpetition interest, before equity  
11 holders may participate in any recovery. See, e.g.  
12 Consolidated Rock Products Co. v. Dubois, 312 U.S.  
13 510, 527, 61 S.Ct. 675, 685 (1941);  
14 Debentureholders Protective Committee of  
15 Continental Inv. Corp., 679 F.2d 264 (1st Cir.),  
16 cert. denied, 459 U.S. 894 (1982) and cases cited  
17 therein").

18 In my view, given that fair and  
19 equitable basis, and going back to the Vanston  
20 Bondholders case, which expressly noted that "It is  
21 manifest that the touchstone of each decision on  
22 allowance of interest in bankruptcy, receivership  
23 and reorganization has been a balance of equities  
24 between creditor and creditor or between creditors  
25 and the debtor," 329 U.S. at 165, the court has a

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2 large amount of discretion in deciding what the  
3 appropriate rate of interest should be under a  
4 Chapter 11 plan for a solvent debtor. This is  
5 confirmed by the more recent cases dealing with the  
6 issue. When it decided the postpetition interest  
7 rate in a vacuum, as a declaratory judgement  
8 matter, in In re Dow-Corning Corporation 237 B.R.  
9 38 Bankruptcy Court Eastern District of Michigan,  
10 1991, and considered only the right to postpetition  
11 interest under 726(a)(5), the court applied the  
12 Federal judgment rate. However, later in that  
13 case, when faced with a specific plan, both the  
14 Bankruptcy Court and the District Court determined  
15 that the contract rate was the appropriate rate of  
16 interest. See In re Dow-Corning Corporation 244  
17 B.R. 678 Bankruptcy Court Eastern District of  
18 Michigan 1999, as well as the District Court  
19 opinion in a different aspect of the postpetition  
20 interest litigation in that case, which declined to  
21 apply the default rate, but made it clear that it  
22 was comfortable with the plain contract rate, which  
23 appears at 2004 US District Lexis 27989 Eastern  
24 District of Michigan 2002. Fairly recently Judge  
25 Walrath in the In re Coram Healthcare Corporation

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2 case at 315 B.R. 321, 346 Bankruptcy Court District  
3 of Delaware 2004 also confirmed this rule when she  
4 said, "we are not persuaded that Section 1129(b)  
5 requires the use of the Federal judgment rate for  
6 postpetition interest under a Chapter 11 plan of  
7 reorganization. Instead we conclude that the  
8 specific facts of each case will determine what  
9 rate of interest is fair and equitable." In that  
10 case the creditors, in her view, unduly delayed the  
11 case and otherwise engaged in conduct that she did  
12 not believe was appropriate and, therefore, she  
13 applied the lower rate. See also In re Anderson  
14 Carter 220 B.R. 411 Bankruptcy District New Mexico,  
15 1998. The highest level of contrary authority that  
16 I could find, In re Cardalucci 285 F3d 1231 Ninth  
17 Circuit 2002, relied exclusively on Section  
18 726(a)(5) and focused on intercreditor fairness,  
19 not creditor/shareholder issues, which again, is  
20 contrary to the basis for interest here, which is  
21 the fair and equitable rule. So, therefore, I  
22 believe that if it were important, postpetition  
23 interest here should be awarded at the contract  
24 rate, the non-default contract rate. I note,  
25 further, that in the so-called waterfall recovery

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2 analyses of both Jeffries and Chanin, the term  
3 "contract rate" is somewhat of a misnomer, in that  
4 a 6 percent rate is given for the SS/L debt, which,  
5 in fact, was not a contract rate but rather a  
6 compromise rate agreed upon by the SS/L creditors  
7 and the other unsecured creditors. According to  
8 the SS/L creditors, the rate they were entitled to  
9 was much higher than 6 percent, which is a fair  
10 compromise rate here.

11                   Again, at a 970 million dollar  
12 enterprise valuation, I believe that the second  
13 issue raised by the equity committee as a basis for  
14 the shareholders being entitled to a recovery here  
15 also is moot. That is, even if Ltd.'s guarantee of  
16 the Orion bonds issued in December of 2001 were  
17 avoided, I believe that at a 970 million dollar  
18 valuation, there would be little to no recovery by  
19 the shareholders, and there would be no recovery  
20 assuming postpetition interest at the contract  
21 rate, and, if my math is right, no recovery at the  
22 Federal judgment rate either, although just barely.

23                   But again, let me address this  
24 argument in more detail, particularly since the  
25 equity committee has made a separate motion for

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2     leave to bring litigation avoiding the 2001 Ltd.  
3     guarantee of the Orion bonds as a fraudulent  
4     transfer under Section 544 of the Bankruptcy Code,  
5     incorporating applicable state fraudulent transfer  
6     law.

7           The first question to ask,  
8     obviously, in this area is does the equity  
9     committee have standing to bring a fraudulent  
10    transfer claim? Clearly it does not unless in the  
11    exercise of the bankruptcy court's discretionary  
12    authority, it is granted standing to do so on  
13    behalf of Ltd.'s estate. As recognized by the  
14    Second Circuit, although not all circuits, official  
15    committees, at least official creditors'  
16    committees, as well as in some instances individual  
17    creditors, can be granted standing to pursue debtor  
18    causes of action if, after review by the court,  
19    they have shown that the debtor has unjustifiably  
20    refused to bring the action. See generally In re  
21    STN Enterprises 779 F2d 901, 904 Second Circuit  
22    1985, as well as In re Housecraft Industries, USA,  
23    Inc., 310 F3d 64, 71 Second Circuit 2002, which  
24    noted that individual creditors might also receive  
25    standing, and further noted that the standard for

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2 granting standing was basically met if three  
3 factors are satisfied. First, there needs to be a  
4 colorable claim that would provide for a recovery.  
5 Second, it needs to be shown that the action is  
6 likely to benefit the debtor's estate. And, third,  
7 that granting standing is in the best interests of  
8 the estate. See also *In re America's Hobby Center,*  
9 *Inc.*, 223 B.R. 275 282 Bankruptcy Court Southern  
10 District New York 1998.

11 At least as regard to the two latter  
12 determinations, the court should reach its  
13 conclusions after holding an evidentiary hearing.  
14 See STN, 779 F2d at 905.

15 As stated by the STN court, the  
16 bankruptcy court "should assure itself that there  
17 is a sufficient likelihood of success to justify  
18 the anticipated delay and expense to the bankruptcy  
19 estate that the continuation of litigation is  
20 likely to produce." *Id.* at 906. Here I considered  
21 both the merits of litigation, and had the  
22 advantage of hearing a significant amount of  
23 evidence on that issue, as well as the benefits of  
24 the litigation to the estate and whether its  
25 pursuit is in the best interest of the estate.



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Before turning to those issues, I should address a second-tier standing issue that has been raised by the debtor, the creditors' committee, and the relevant indenture trustee, which is the standing of an equity committee to bring fraudulent transfer litigation on behalf of the estate, as opposed to creditors. Here there is apparently a direct conflict in the case law between a bankruptcy court on the one hand, and a district court on the other. In *In re Revco DS Inc.*, 118 B.R. 468 at 475 Bankruptcy Court in the Northern District of Ohio 1990, the court refused to give the shareholders standing to pursue fraudulent transfer claims, taking the view that fraudulent transfer recoveries are only for the benefit of creditors, not for shareholders. And that is in contrast with *9281 Shore Road Owners Corporation versus Seminole Realty Company* 187 B.R. 837 851 Eastern District New York 1995, in which the court noted the difference between the fact that outside of bankruptcy only creditors can bring fraudulent transfer litigation and its view that in bankruptcy fraudulent transfer litigation can be brought for the benefit of all parties, including

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2 shareholders, because it's brought on behalf of the  
3 estate as opposed to creditors. That view, in my  
4 mind, comports with the plain language of Section  
5 550 of the Code which refers to recoveries from  
6 avoidance litigation, including litigation under  
7 Section 544, as being for the benefit of the  
8 estate, and since recoveries here are generally  
9 fungible, given that the secured debt was paid off  
10 long ago, I believe that, in this situation, the  
11 equity committee would have standing or would not  
12 be barred from pursuing a cause of action if I  
13 permitted it to do so, because it was an equity  
14 committee as opposed to a creditors' committee.  
15 There may be situations where that conclusion would  
16 be changed by the equities of the case, but here,  
17 where the committee is representing largely public  
18 shareholders, the committee, if given standing,  
19 would not be prevented from pursuing a claim, I  
20 believe, because of its status as an equity  
21 committee.

22 That however, does not answer the  
23 question, because, based on my evaluation of the  
24 merits, and my weighing of the benefits to the  
25 estate as against the potential harm to the estate

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2 of bringing the litigation, I conclude that the  
3 litigation would not be in the estate's best  
4 interests and the committee's motion should be  
5 denied. The only valuation prepared in connection  
6 with the proposed challenge to the 2001 exchange  
7 offer and the guarantee given by Ltd. in connection  
8 therewith was prepared by Mr. Robins at Greenhill.  
9 He based it on the debtors' projections at the  
10 time, which Mr. Townsend, who was very involved  
11 with those projections at the time, testified were  
12 reasonable and achievable based on historic trends  
13 of EBITDA and revenue, and which Mr. Robins,  
14 perhaps not with the care with which he  
15 professionally vetted the current projections, but  
16 nevertheless professionally, vetted in discussions  
17 with management, by looking at the companies'  
18 projections and performance, and by reviewing  
19 analysts' reports. In particular, Mr. Townsend  
20 testified that notwithstanding 27 percent growth of  
21 EBITDA between 2000 and 2001 for Orion, Orion and  
22 Loral projected 15 percent growth for EBITDA in  
23 2001 to 2002, going down to 11 percent in the next  
24 year, and generally flattening out thereafter. He  
25 testified that he as the companies' chief financial

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2 officer had no concern regarding the ability of  
3 Orion to make its debt payments after the exchange  
4 offer, which were substantially reduced; and he  
5 also did not have any concern also that Ltd. could  
6 not pay its debts when due.

7 Based on the company's projections,  
8 Mr. Robins did a DCF analysis of Orion which showed  
9 it to be quite solvent. And he similarly did an  
10 analysis of Ltd. which also showed it to be solvent  
11 on an enterprise basis as of the time of the  
12 exchange offer. Based on Mr. Robins' analysis,  
13 Orion was solvent by 111 million to 328 million  
14 dollars on a going concern basis with \$217 million  
15 of solvency as the mid point. Based on the DCF  
16 analysis, Ltd. was solvent between 530 and a  
17 billion 40 million dollars, which was also  
18 considerably below the market capitalization at the  
19 time of the exchange offer. Mr. Townsend had also  
20 testified as to the benefits of the exchange offer.  
21 And he testified the guarantee by Ltd. was a  
22 necessary and integral part of that exchange. He  
23 noted that Orion, before the exchange offer, was  
24 facing the fact that in the next year it would have  
25 to pay a considerable amount of interest that it

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2   previously had been paying in kind, and although  
3   the company believed it had measures to ensure the  
4   payment of Orion's debts, there was considerable  
5   uncertainty about being able to meet them given  
6   their increase in 2002.

7                   In addition, a default on the  
8   pre-exchange Orion debt would trigger cross  
9   acceleration provisions in the bank debt that was  
10   secured by Loral's satellite assets, and therefore  
11   trigger the acceleration of over 500 million  
12   dollars of secured bank debt. Moreover, the  
13   exchange offer cannot be viewed in a vacuum, it was  
14   part of an integrated strategy of delevering Loral,  
15   which included extending the maturity of bank debt  
16   which was coming due in respect of 535 million  
17   dollars in 2002. Because of the exchange offer,  
18   again of which the Ltd. guarantee was an integral  
19   part, the next day that bank debt was extended to a  
20   new date coterminous with the Orion bonds. In  
21   addition, following the completion of the exchange  
22   offer, Orion's debt was reduced by approximately  
23   230 million dollars, and its annual interest burden  
24   was reduced by approximately 39 million dollars.

25                   These changes not only benefited

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2     Orion, but also Ltd.. As Mr. Townsend testified,  
3     although obviously Ltd. itself, before the issuance  
4     of the guarantee, was not legally obligated for  
5     Orion's debt, that fact was "interesting but not  
6     persuasive" to lenders and the rating agencies who  
7     viewed the enterprise on a consolidated business,  
8     noting that their businesses were interrelated, not  
9     only by the cross-acceleration and default  
10    provisions I alluded to earlier, but also by the  
11    fact that, as a business matter, they were  
12    interrelated.

13                   It appears that the exchange offer,  
14    including the Ltd. guarantee of the new Orion  
15    bonds, was discussed over many months and at length  
16    by both Orion's board and Ltd.'s board. Those  
17    discussions as memorialized in the minutes  
18    introduced into evidence, contain two somewhat  
19    troubling remarks by Mr. Schwartz that pertain to  
20    my evaluation of the transaction. First, and I  
21    believe this was in a July 2001 meeting, he noted  
22    some competition and a general downturn in the  
23    satellite business, as well as some softening, at  
24    least in the data business, at Orion. However, it  
25    appears that Orion's primary business continued to

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2     meet or come close to meeting its projections for  
3     2001, absent the data business, which was  
4     transferred out of Orion in connection with the  
5     exchange offer. The equity committee has also made  
6     or tried to make much of a reference to a solvency  
7     discussion found in the board minutes; however, I  
8     do not believe that the reference to a solvency  
9     discussion at all indicates anything more than a  
10    reasonable question raised by the board, which any  
11    board should raise with regard to a transaction of  
12    this nature. It appears to have been addressed by  
13    a discussion led by the treasurer, who was  
14    primarily focused on how to pay ongoing  
15    obligations, as well as by counsel.

16           There was not much inquiry by either  
17    party, by the equity committee or the company in  
18    the trial, with regard to whether Orion was  
19    adequately capitalized after the exchange offer.  
20    However, in the light of particular concerns that  
21    were raised by the LSPC, I find as follows: First,  
22    having purchased its satellites that underlay the  
23    projections before the exchange offer, Orion did  
24    not have significant projected capital expense  
25    obligations. Second, it was aware of the so-called

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2 "solar array problem" with regard to some or all of  
3 its satellites; however, there is no showing that  
4 that problem was not already factored into the  
5 projections. And based on my review of the 10(k)s,  
6 I believe it was factored into them. Additionally,  
7 I believe that the lack of a complete range of  
8 transponders for Telstar 12 was also factored into  
9 the projections. And finally I believe that the  
10 problem with Telstar 11 having one year less life  
11 than anticipated, arose after the exchange offer  
12 and was not reasonably anticipated at the time.  
13 Given all the foregoing, it appears to me that  
14 Orion did not have material capital expenditures  
15 and therefore was not inadequately capitalized at  
16 the time of the exchange offer.

17 I've been focusing on the time of  
18 the exchange offer and particularly immediately  
19 after the exchange offer and Ltd.'s issuance of the  
20 guarantee, because that is the time that one must  
21 consider solvency in connection with a fraudulent  
22 transfer claim. In particular, one should be  
23 careful not to be caught up in hindsight in  
24 conducting a solvency analysis, although it is  
25 appropriate to do some comparison between



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2 projections and actual results to see if the  
3 projections were unreasonable. See generally In re  
4 RML Inc. 92 F3d 139, 155 Third Circuit 1996 and  
5 Lippe versus Bairnco, 249 F.Supp. 2d 357 380  
6 S.D.N.Y. 2003.

7 Here it seems to me, although we did  
8 not have a full trial on the fraudulent transfer  
9 issue, that Mr. Robins' valuation was quite  
10 credible and that it would be difficult for the  
11 equity committee to overcome it. In trying to meet  
12 its burden in respect to the STN factors, the  
13 committee offered up Mr. Belinsky's critique of Mr.  
14 Robins' 2001 analysis; however, that critique was  
15 flawed in a number of respects. First, the  
16 critique merely involved applying a 33 percent  
17 discount to EBITDA, as used by Mr. Robins, and  
18 otherwise followed his valuation to the letter.  
19 Mr. Belinsky adopted the 33 percent discount  
20 approach to the projections upon which Mr. Robins'  
21 2001 valuation was based because he believed that  
22 such projections were highly flawed.

23 Mr. Belinsky did not do his own due  
24 diligence on the projections however, but relied  
25 only on two things: one, his recollection or

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2 someone at Chanin's recollection that Mr. Townsend  
3 had told them during their due diligence that the  
4 company was very aggressive in its projections at  
5 the time and historically before then. Mr.  
6 Townsend's testimony before me, however, did not go  
7 nearly that far in reference to the projections  
8 either on direct or cross, as noted above. In  
9 addition, Mr. Belinsky compared the November 2001  
10 projections versus actual results for 2001, 2002  
11 and 2003. However, this comparison, as well as his  
12 33 percent methodology was itself flawed in two  
13 respects. First of all, he applied his 33 percent  
14 discount not only to the projected numbers, but  
15 also to Orion's actual EBITDA for 2001, minus the  
16 negative EBITDA for the data business. This  
17 discounting of an actual number resulted in a  
18 significant understatement of Orion's value. The  
19 equity committee tried to overcome this flaw at  
20 oral argument by suggesting that the actual number  
21 was only a projection and therefore should be  
22 appropriately discounted as a projection, which  
23 logically didn't make sense, but even if one were  
24 to take that approach, one should have then taken  
25 the original projection, which was considerably

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2 higher than the 105 million dollar actual amount  
3 that Mr. Belinsky applied a 33 percent discount to.

4 In addition, in showing variations  
5 from projected performance, Mr. Belinsky added in  
6 the data business, which had a 20 million dollar  
7 negative EBITDA in 2001, whereas the data business  
8 was actually transferred out of Orion as part of  
9 the exchange offer. Finally, even the actual  
10 versus projected variances for the key measures of  
11 EBITDA and revenue as shown on Committee Exhibit  
12 45, were lower than 33 percent for 2001 and 2002.

13 Given all the foregoing, I do not  
14 accept that a 33 percent automatic discount of the  
15 projections, let alone any discount as against  
16 actual 2001 EBITDA, was reasonable; moreover, it  
17 does appear to me that there is a logical  
18 explanation for why Ltd. and Orion's performance  
19 sharply declined in mid 2002, which is, as  
20 testified to by the business people for Loral, the  
21 severe downturn in the industry and the lack of  
22 orders for satellites. Therefore, again, while I  
23 accept that it may be appropriate to compare  
24 projections at the time of the allegedly fraudulent  
25 transfer with actual results to see if those

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2 projections were unreasonable and therefore that  
3 the actual value was much lower as of the time of  
4 the transfer than the value based on the  
5 projections, I believe that it was here an  
6 intervening and unanticipated set of events that  
7 lead to the ultimate failure of the business plan  
8 and Loral's going into bankruptcy.

9 Because Orion appears to have been  
10 solvent, I believe it was proper for all the  
11 parties, including Chanin, not to double count the  
12 Ltd. guarantee, that is to treat it as one  
13 liability on a consolidated basis. See In re  
14 Xonics, 841 F2d 198 Seventh Circuit 1998.

15 I should also note that what is at  
16 issue here is a "downstream" guarantee, which  
17 traditionally is viewed as immune to fraudulent  
18 transfer attack because of the parent's interest in  
19 its subsidiary. There is a recognized exception to  
20 that rule, although the cases applying it are very  
21 few. And they are basically In re Rodriguez 895  
22 F2d 725 11th Circuit 1990 and Commerce Bank of  
23 Kansas City versus Achtenberg 1993 US District  
24 Lexis 16136 District Court Western District of  
25 Missouri 1993. Both of those cases point out that

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2 where a subsidiary is insolvent or clearly  
3 insolvent at the time, the parent's incurrence of  
4 an obligation, or a transfer by it on behalf of a  
5 subsidiary does not confer any direct benefit on  
6 the parent, and therefore, could be a fraudulent  
7 transfer. However, in both of those cases, the  
8 insolvency of the subsidiary was stipulated.  
9 That's clearly not the case here.

10 In addition, there appears to have  
11 been both direct and indirect value afforded to the  
12 parent, Ltd., as a result of and in conjunction  
13 with its granting of the guarantee. The direct  
14 value is the value to its equity in Orion -- a 229  
15 million dollar debt reduction and annual interest  
16 expense reduced by a \$39 million annually. The  
17 indirect benefit, which is well recognized under  
18 the case law, including in the Second Circuit, see  
19 HBE Leasing Company versus Frank 48 F3d 623 638  
20 Second Circuit 1995, was also considerable. I've  
21 already discussed that the facts that the markets  
22 and the rating agencies and lenders viewed Loral on  
23 a consolidated basis, and the cross-defaults and  
24 cross-acceleration provisions and the related bank  
25 loan extension transaction that occurred a day

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2 after the exchange offer and Ltd.'s guarantee all  
3 meant that the exchange offer and guarantee  
4 provided considerable value and indirect benefit to  
5 Ltd., which in my mind clearly exceeded the  
6 negative impact of the Ltd. guarantee at the time.  
7 Because of the unusual nature of a "downstream"  
8 guarantee being the subject of a fraudulent  
9 transfer attack, I gave little weight to the  
10 argument by the equity committee that the absence  
11 of a contemporaneous solvency opinion is a bad fact  
12 here. Mr. Belinsky acknowledged that his firm, to  
13 his knowledge, had never rendered a downstream  
14 guarantee solvency opinion, and he had never seen  
15 one.

16 I do not give much weight either to  
17 the other so-called indicia of insolvency that Mr.  
18 Belinsky referred to in his testimony. I note  
19 that, again, Chanin's views are not backed up by  
20 any sort of written work product or any market  
21 value or going concern enterprise analyses of Ltd.  
22 or Orion in the relevant time range. Instead, in  
23 addition to pointing to Orion's post 2001  
24 performance versus its projections, Mr. Belinsky  
25 pointed to book value indicia that were indeed

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2       concededly negative, including the write-off, for  
3       GAAP purposes, of approximately 500 million dollars  
4       to comply with a new accounting standard applied  
5       industry-wide in 2002, and a history since well  
6       before the exchange offer of negative book income.  
7       Neither of those facts appear to have resulted in  
8       any reduced interest by customers in doing business  
9       with Loral or reduced borrowing prospects, which is  
10      not surprising, given that they had very little  
11      bearing on the company's actual ability to pay  
12      their debts when they come due. Those factors as  
13      well as the book accounting "liquidity" factors  
14      referred to in his exhibit, Mr. Belinsky  
15      acknowledged, had never appeared in a solvency  
16      opinion that he or his firm had written, and  
17      wouldn't appear in a solvency opinion if one were  
18      to be prepared in connection with this matter. It  
19      wasn't clear to me, therefore, how they would  
20      "inform the opinion," as he testified, except as  
21      some sort of nebulous confirmation of whatever else  
22      the opinion contained.

23                   Of similar relevance, or  
24      irrelevance, is the trading value of Orion's and  
25      Ltd.'s debt and equity securities before and after

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2 the exchange offers. In my view, the negative  
3 trading value before the exchange, the spike in the  
4 trading value of the bonds after the exchange and  
5 the subsequent decrease in the trading value in the  
6 summer of 2002 is not particularly telling,  
7 particularly given the fact that prices lowered in  
8 2002 after a revised forecast by Ltd. in light of  
9 its realization that satellite orders were not  
10 coming in as they had previously been expected.  
11 Similarly, the very positive market cap on the  
12 equity securities is not particularly telling,  
13 either. Although it's often taken as gospel that  
14 market pricing levels of debt and equity trading  
15 are indicia of value, the very fact that people are  
16 in the market to make substantial profits suggests  
17 that, on a trading basis, those trading values are  
18 not to be particularly relied upon, at least for  
19 short term valuations. And Mr. Belinsky  
20 acknowledged as much by noting that, again, at most  
21 such information would be informative of or  
22 colorable to a solvency opinion if he were to  
23 render one.

24 All things considered then, although  
25 there wasn't obviously a full trial on the issue of



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2 solvency, or of fair consideration or reasonably  
3 equivalent value, it's clear to me that the equity  
4 committee would have a very difficult row to hoe if  
5 it were to pursue this litigation. I note that  
6 even if I were somewhat off in my 2005 valuation,  
7 it would also be pursuing litigation largely for  
8 the benefit of the unsecured creditors, who very  
9 much do not want it to be pursued. Therefore, even  
10 if the equity committee would have standing,  
11 notwithstanding it being an equity committee, I  
12 can't ignore the fact that based on my \$970 million  
13 valuation of Ltd. in 2005, or as of June 30, 2005,  
14 most, if not all, the recovery would go to the  
15 benefit of the unsecureds.

16 In addition to the unsecureds not  
17 wanting the litigation to be pursued, as I said at  
18 the beginning of this opinion in the portion of it  
19 which is under seal, the company has given very  
20 good reasons why the pursuit of litigation and the  
21 delay of Ltd.'s emergence from Chapter 11 would be  
22 a real deterrent to the debtors' business. And  
23 consequently I believe that the pursuit of the  
24 litigation is not in the best interest of the  
25 estate and creditors and does not meet a

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2 cost/benefit analysis, as required by STN and its  
3 progeny. Therefore I will deny the motion by the  
4 equity committee for leave to have standing to  
5 pursue the fraudulent transfer litigation.

6 I do that without additionally  
7 considering factors going to the cost of  
8 litigation, which would not only include out of  
9 pocket costs, but also the additional postpetition  
10 interest that would accrue during the time the  
11 litigation was pursued. The equity committee has  
12 not quantified those costs, nor have the debtors,  
13 but I believe they would both be quite significant.  
14 And given, again, the unlikelihood of the  
15 shareholders seeing any benefit from a recovery,  
16 even if they were to obtain a settlement or some  
17 victory on the merits, those costs would just eat  
18 into the gap further.

19 Let me then address the final  
20 objection made by the shareholders to confirmation  
21 of the plan, which is the allegation that's long  
22 been made in this case, that there has been some  
23 form of unholy bargain between the debtors'  
24 management and the creditors' committee or the  
25 chairman of the creditors' committee. Mr. Schwartz

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2 was really the only witness on this point, and he  
3 testified that he has basically been involved in  
4 all of the substantive negotiations in this case,  
5 or kept very closely apprised of them when they  
6 were done by financial advisers or lawyers in the  
7 first instance. He stated that he negotiated the  
8 basic terms of the stock options granted to certain  
9 members of management, although not to Mr. Schwartz  
10 himself, in July of 2004, including the strike  
11 price at an estimated midpoint valuation of 700  
12 million for the debtors.

13 It is my belief, based on the  
14 formulation of the plan as originally filed in  
15 connection with the creditors' committee  
16 negotiations, that the negotiation of the New  
17 Skynet notes did not occur until substantially  
18 thereafter. A major element, if not the only  
19 element of the "unholy bargain" argument is  
20 premised upon a presumed linkage between the New  
21 Skynet notes and the management contracts and stock  
22 options. But the timing doesn't seem to work. In  
23 fact, the New Skynet notes were still being  
24 negotiated up until shortly before the commencement  
25 of this hearing.

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2 In addition, Mr. Schwartz testified  
3 that the management contracts and the stock option  
4 package, in his view, (a), closely followed the  
5 form of those agreements that are in existence  
6 today as far as the management contracts are  
7 concerned, and, (b), were comparable to, and  
8 necessary to compete against, similar packages of  
9 executive compensation offered by the company's  
10 competitors and necessary to retain key employees.  
11 There was no real rebuttal of those points. It's  
12 obvious to me that the stock option grant is  
13 generous given my valuation finding. However, I  
14 note the following: first, it does not kick in  
15 immediately but spreads out in 25 percent segments,  
16 therefore in effect binding key employees to the  
17 debtor over time. Secondly, largely at my  
18 instigation, the Key Employee Retention Plan  
19 originally proposed by these debtors has not been  
20 revised as far as the senior management is  
21 concerned. I took Mr. Schwartz's testimony as to  
22 the need for these contracts and stock options, in  
23 part to be to fulfill, the commitment, which had  
24 not heretofore been fulfilled, to retain key  
25 employees. And in effect management has been

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2 waiting for this for about a year and a half.

3 So in that sense, while normally one  
4 would see stock options tied to the future  
5 appreciation of the company's value after emergence  
6 from Chapter 11 and thereafter, I view the stock  
7 option program here as part of fulfilling an  
8 unfulfilled promise to the employees for sticking  
9 around during the case.

10 I certainly understand the LSPC's  
11 dislike of such compensation, particularly the  
12 stock options, given the treatment that  
13 shareholders are receiving under the plan; however,  
14 as a technical legal matter, I believe that  
15 management is receiving this compensation here not  
16 because they are shareholders but because they are  
17 managers. And I note that they are receiving it  
18 with the agreement or lack of objection by the  
19 future owners of the company, its unsecured  
20 creditors, who I do not believe received any  
21 improper quid pro quo for that agreement, but,  
22 rather, had reached the view that they were willing  
23 to have such compensation be paid to management  
24 because they wanted that management in there  
25 working for Loral and believed it was necessary to

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2 keep them...

3 I note that given the renegotiation  
4 of the plan in light of the settlement with the  
5 SS/L creditors, the creditors as a whole had the  
6 opportunity, if they wanted to, to renegotiate the  
7 management arrangements, and they chose not to do  
8 so. Again in my view that means that they are  
9 doing it for their own business purposes and not  
10 for any other sort of quid pro quo. As far as the  
11 New Skynet Notes are concerned, there is very  
12 little, if any, testimony by Chanin as to whether  
13 and why, particularly as revised, they were still  
14 clearly not at market as alleged by Chanin. And  
15 while it is clear that the interest rate was not in  
16 and of itself negotiated, the terms of the notes,  
17 including the basket for other secured debt and  
18 other features that took it into the high yield  
19 range, occurred before the confirmation hearing  
20 began. In any event, it is appears to me that to  
21 the extent that those notes are not market priced,  
22 and we will see if that's the case or not when  
23 they're issued, because there is really very little  
24 evidence in the record to show whether they're at  
25 or over the market price, it appears to me that the

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2 difference in the grand scheme of things in the  
3 overall valuation of these companies is not  
4 material.

5                   So, based on that analyses and there  
6 being no other allegation of any other sort of an  
7 unholy bargain, other than some ambiguous language,  
8 in my view, in the disclosure statement pertaining  
9 to the revision of the debtors' business plan after  
10 discussion with the creditors' committee, I find  
11 that the plan meets the good faith requirement  
12 under Section 1129(a) (3) of the Bankruptcy Code and  
13 therefore should be confirmed.

14                   So, Mr. Karotkin, to continue, I  
15 don't know if I've seen a proposed confirmation  
16 order.

17                   MR. KAROTKIN: No, sir.

18                   THE COURT: You should circulate  
19 one.

20                   MR. KAROTKIN: Yes, sir. We didn't  
21 want to be presumptuous.

22                   THE COURT: And as I recall from  
23 your remarks at the start of the trial, you had  
24 resolved the other plan objections except for some  
25 language you were still working out with the U.S.

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2 ..Trustee and the creditors' committee.

3 MR. KAROTKIN: Yes. Actually as to  
4 the U.S. Trustee, we had resolved that language and  
5 I believe that was reflected on the record and we  
6 had also resolved the language as to the creditors'  
7 committee on the record I just wanted to point out  
8 as to the objection filed by the ERISA plaintiffs.

9 THE COURT: Yes.

10 MR. KAROTKIN: What we have agreed  
11 is that that objection will be addressed as part of  
12 the claims resolution process and we have agreed  
13 that it will be withdrawn as an objection to  
14 confirmation without any prejudice to any of their  
15 rights, and we have no problem with that.

16 THE COURT: So what does that mean  
17 with regard to Section 510, that language? Is that  
18 still open for argument?

19 MR. KAROTKIN: Yes. That won't  
20 impact the ability to go effective or not go  
21 effective.

22 THE COURT: Is that correct, Mr.  
23 Etkin?

24 MR. ETKIN: Yes, your Honor. All  
25 issues as to classification and subordination are



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2 reserved for the claims resolution process.

3 THE COURT: All right.

4 MR. KAROTKIN: So we'll be happy to  
5 circulate a revised order to each of the  
6 committees, we'll hopefully get that out tonight.

7 THE COURT: Okay very well thank  
8 you.

9 MR. GOLDEN: Your Honor --

10 MR. KAROTKIN: The only other matter  
11 I guess, your Honor, is the order that you entered  
12 permitting the complaint to be filed.

13 THE COURT: Well, that I think by  
14 its terms is of no effect at this point except that  
15 it reserves an issue, in effect, on appeal.

16 MR. KAROTKIN: That's fine. Thank  
17 you, sir.

18 THE COURT: So once the order is  
19 entered, the parties can go and argue in the  
20 District Court about what that means.

21 MR. KAROTKIN: Very well. Thank  
22 you, your Honor.

23 THE COURT: Okay.

24 MR. WOLFSON: Your Honor.

25 THE COURT: I guess you owe me two

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2 orders then.

3 MR. KAROTKIN: Yes, sir.

4 THE COURT: Okay.

5 MR. GOLDEN: Your Honor, I'm sorry.

6 I don't mean to prolong this, but I'm looking at  
7 the order that Mr. Karotkin referred to, and the  
8 ordered paragraph in question is that the court's  
9 denial of the motion to prosecute may result in the  
10 immediate dismissal of the complaint. When we  
11 talked about it that day, I think you left open the  
12 possibility that you would rule on the automatic  
13 dismissal.

14 THE COURT: Well, someone is going  
15 to have to ask me for a stay, otherwise it will be  
16 dismissed.

17 MR. GOLDEN: So absent a stay, the  
18 complaint -- by virtue of the denial of the motion,  
19 the complaint will be dismissed.

20 THE COURT: Right.

21 MR. GOLDEN: Thank you.

22 THE COURT: But that's subject to  
23 the equity committee's request for a stay.

24 MR. GOLDEN: I understand. Thank  
25 you for your time and patience.

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THE COURT: All right. Thank you.

MR. WOLFSON: Thank you, your Honor.

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C E R T I F I C A T E

STATE OF NEW YORK       }  
                                      }       ss.:  
COUNTY OF WESTCHESTER }

I, Denise Nowak, a Shorthand  
Reporter and Notary Public within and for  
the State of New York, do hereby certify:

That I reported the proceedings in  
the within entitled matter, and that the  
within transcript is a true record of such  
proceedings.

I further certify that I am not  
related, by blood or marriage, to any of  
the parties in this matter and that I am  
in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have  
hereunto set my hand this \_\_\_\_\_ day of  
\_\_\_\_\_, 2005.

\_\_\_\_\_  
DENISE NOWAK

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